



(the "Tank Car"), landed in the headwaters of the Sacramento River at the location described above (the "Site").

2. The population of the Town of Dunsmuir, located approximately six miles downstream of the Site, is approximately 2,300. In addition, other persons live near and downstream of the Site, stay at campgrounds near the Site or visit the River for the day. The water into which the Spill (as defined below) occurred drains into Lake Shasta, the major source of drinking and irrigation water for the California Water Project, serving urban populations throughout the State. In addition, there are two small water systems that draw water directly from Lake Shasta. The river in the vicinity of the Site contains a large number of Blue Gill, Rainbow and German Brown trout and other fish and wildlife. The river in this vicinity is unique because its fish are of a native strain.

3. The Tank Car was under the control of Respondent at the time of the Spill.

4. The Tank Car contained approximately 19,990 gallons of sodium methyldithiocarbamate ("Metam Sodium"). When the Tank Car fell into the Sacramento River, Metam Sodium was released into the river (the "Spill"). The Spill resulted in the release into the air of fumes, which have been spread by winds. Material from the Spill has washed downstream at least 15 miles from the Site. Some Metam Sodium remains in the Tank Car.

5. Metam Sodium is a soil fumigant and herbicide.

6. Metam Sodium decomposes when diluted with water to carbon disulfide, monomethylamine (both highly flammable), methylisothiocyanate and/or hydrogen sulfide. The latter two substances are highly poisonous. When mixed with water, Metam Sodium gives off toxic fumes of methyl isothiocyanate, hydrogen sulfide and nitrogen oxides. Metam Sodium is known to cause central nervous system depression. Routes of exposure are inhalation, ingestion and eye and skin contact.

7. It is possible that people will pick up and eat fish killed by the Spill, which may contain Metam Sodium and/or the chemicals into which it decomposes. At least 190 people have been treated for eye and skin irritation and other ailments resulting from the spill. A large number of persons have been evacuated from the area. Interstate 5 has been closed in the vicinity and other access to the River has been restricted.

8. Metam Sodium is known to be toxic to fish and harmful to other wildlife. Large numbers of fish have been killed by the Spill. It is expected that the Spill will destroy many food-chain organisms and much vegetation, causing long-term damage to birds

and mammals that rely on them for food sources. At least 30 miles of river could be harmed by the Spill.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings, U.S. EPA has concluded that:

1. The Tank Car and all locations where hazardous substances have come to be located are a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
3. Respondent was the operator of the Tank Car at the time of disposal of hazardous substances, as defined by Sections 101(20) of CERCLA, 42 U.S.C. Section 9601(20). Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. Section 9607.
4. The material spilled from the Tank Car and/or the materials that are the break-down products thereof are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
5. The Spill constitutes an actual and threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

#### DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law, the Director, Hazardous Waste Management Division, EPA Region IX, has made the following determination:

1. The actual and threatened release of hazardous substances from the Tank Car and the Site may present an imminent and substantial endangerment to the public health, welfare and/or the environment.
2. The actions required by this Order, if properly performed, are consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA; and are appropriate to protect the public health, welfare or the environment.
3. The conditions present at the Site constitute a threat to public health, welfare and/or the environment based upon consideration of the factors set forth in the NCP at 40 CFR section 300.415(b). These factors include, but are not limited to, the following:
  - a. actual or potential exposure to hazardous substances

by nearby populations, animals, or food chain;

This factor is present at the Site due to the toxicity of Metam Sodium, the substances into which it decomposes when mixed with water and the fumes released when it is mixed with water, the fact that substantial numbers of people and animals are located near the Site, and the routes of exposure, each described above.

- b. actual or potential contamination of drinking water supplies or sensitive ecosystems;

This factor is present at the Site due to the facts that the Sacramento River feeds into Lake Shasta, a significant reservoir, and contains significant numbers of fish.

- c. hazardous substances in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

This factor is present at the Site due to the continued presence of Metam Sodium in the Tank Car.

- d. weather conditions that may cause hazardous substances to migrate or be released;

This factor is present at the Facility due to fact that winds have spread and may continue to spread the fumes resulting from the Spill and the flow of river water will continue to spread the Spill.

- e. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may pose a threat of release;

This factor may be present if the Metam Sodium enters or is deposited on surface soils at or downstream of the Site.

- f. threat of fire or explosion;

This factor is present in that two of the chemicals into which Metam Sodium decomposes are highly flammable.

- g. the availability of other appropriate Federal or State response mechanisms to respond to the release;

This factor supports the actions required by this Order at the Facility because, although Federal and State response mechanisms are ongoing and will continue, the actions required of Respondent by this Order are needed, in addition to such governmental response, to mitigate the imminent and substantial endangerment described herein.

### WORK TO BE PERFORMED

Based upon the foregoing Findings, Conclusions and Determinations, and pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), it is hereby Ordered that Respondent undertake the following actions under the direction of EPA's On-Scene Coordinator. As used herein, "days" mean calendar days.

1. Upon receipt of this Order, the Respondent shall provide twenty-four (24) hour security at the Site that meets with EPA approval. Respondent shall take all actions required by EPA to assist in the removal of the contents of the Tank Car or otherwise to respond to the Spill, including but not limited to ensuring that traffic on the rail line on which the derailment described above occurred does not interfere with any activities conducted by any government agency.

2. Except as provided below with regard to access by government agencies, Respondent shall restrict access to the Site and shall not allow any materials, equipment or any other item to be removed from the Site without prior EPA approval.

3. Within seven days after the effective date of this Order, Respondent shall convene a meeting of the Respondent, U.S. EPA, the U.S. Department of Fish and Wildlife, the California Department of Fish and Game and other interested public agencies (the "Meeting"). At the Meeting, Respondent shall present and discuss a proposed Work Plan for the removal activities ordered as set forth in Paragraph 6 below. The Work Plan shall provide a concise description of the activities proposed to be conducted to comply with the requirements of this Order. The Work Plan shall be reviewed by appropriate government agencies. Respondent shall implement the Work Plan as finally approved by U.S. EPA. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.

4. The Work Plan shall contain a site safety and health plan, a sampling and analysis plan, and a schedule of the work to be performed. The site safety and health plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, dated November 1984 and updated July 1988, and with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 120. The Work Plan and other submitted documents shall demonstrate that the Respondent can properly conduct the actions required by this Order.

5. Respondent shall retain a contractor qualified to undertake and complete the requirements of this Order, and shall notify U.S. EPA of the name of such contractor at the Meeting. U.S. EPA retains the right to disapprove of any contractor and/or

subcontractor retained by Respondent. In the event U.S. EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor to perform the work, and such selection shall be made within two (2) days following U.S. EPA's disapproval.

6. Upon U.S. EPA approval of the Work Plan, Respondent shall implement the Work Plan as approved or modified by U.S. EPA. Failure of the Respondent to properly implement all aspects of the Work Plan shall be deemed to be a violation of the terms of this Order. The Work Plan shall set forth Respondent's plan for completing the following actions, and shall set forth Respondent's proposal for the time periods required to take each of these actions:

- a. Removing all Metam Sodium, all chemicals into which it decomposes, and all other hazardous substances release at or from Spill from the Site, the Sacramento River and any other body of water or soils into which the Metam Sodium or any such substances have come to be located.
- b. Taking all steps necessary to assess the damage to fish, food chain organisms, other wildlife and other natural resources caused by the Spill, including damage to the Sacramento River, Lake Shasta, any other body of water.

7. Beginning on the seventh day after the effective date hereof and on each seventh day thereafter, Respondent shall provide EPA with a written report. These reports shall contain a summary of the previous week's activities and planned activities in compliance with this Order or otherwise relating to the Spill or the Site, including sampling, results of sampling and significant communications with State and other Federal agencies. The first such report shall contain a detailed description of the Spill, including name and address of the owner of the Metam Sodium, its destination, the name and address of the intended recipient and the shipper, the purpose of the shipment, and any legal or financial agreements or arrangements among Respondent, the shipper and the intended recipient.

8. EPA shall be informed at least forty-eight (48) hours prior to any on Site work by Respondent or its contractors, subcontractors or agents.

9. All sampling and analysis shall be consistent with the "Removal Program Quality Assurance/Quality Control Interim Guidance: Sampling, QA/QC Plan and Data Validation," EPA OSWER Directive 9360.4-01, dated February 2, 1989.

10. All materials containing hazardous substances, pollutants, or contaminants removed pursuant to this Order shall be disposed of or treated at a facility approved by the On-Scene Coordinator and in accordance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 9601, et seq., as amended, the U.S. EPA Revised Off-Site Policy, and all other applicable Federal, State and local requirements.

11. Within one day after the effective date of this Order, the Respondent shall designate a Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. The U.S. EPA has designated as its On-Scene Coordinator, Robert Bornstein. The On-Scene Coordinator and the Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communication between the Respondent and the U.S. EPA, and all documents, reports, and approvals, and all other correspondence concerning the activities relevant to this Order, shall be directed through the On-Scene Coordinator and the Project Coordinator.

12. The U.S. EPA and the Respondent shall each have the right to change their respective designated On-Scene Coordinator or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be oral, but shall promptly be reduced to writing.

13. The U.S. EPA On-Scene Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Order and to direct Respondent to take response actions at the Site or elsewhere.

14. No extensions to the above time frames shall be granted without sufficient cause. All extensions must be requested in writing, and shall not be deemed accepted unless approved, in writing, by U.S. EPA.

15. All instructions by the U.S. EPA On-Scene Coordinator or his designated alternate shall be binding upon the Respondent as long as those instructions are not clearly inconsistent with the National Contingency Plan.

16. To the extent that the Site or other areas where work under this Order is to be performed is owned by, or in possession of, someone other than the Respondent, Respondent shall use its best efforts to obtain all necessary access agreements. In the event that after using its best efforts Respondent is unable to obtain such agreements, Respondent shall immediately notify U.S. EPA.

17. Respondent shall provide access to the Tank Car and the Site to employees, contractors, agents and consultants or U.S. EPA and other Federal and State agencies and shall permit such persons to be present and move freely in the area in order to conduct inspections, including taking photographs and videotapes of the Tank Car and the Site, to do cleanup/stabilization work, to take samples and to conduct other activities as the U.S. EPA and any such agency determines to be necessary.

18. Nothing herein shall be construed to prevent U.S. EPA or any other Federal or State agency from seeking legal or equitable relief to enforce the terms of this Order, or from taking other legal or equitable action as it deems appropriate or necessary, or from requiring Respondent to perform additional activities pursuant to CERCLA or any other applicable law.

19. The provisions of this Order and the directions of the On-Scene Coordinator shall be binding on the employees, agents, successors and assigns of the Respondent.

20. Paragraphs 1 and 2 of this Order are effective upon receipt of this Order by Respondent. All other provisions hereof shall be effective on the date of this Order's receipt by Respondent, unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective on the day following the day of the conference unless modified in writing by U.S. EPA.

21. On or before the effective date of this Order, Respondent shall provide notice, verbally or in writing, to U.S. EPA stating its intention to comply with the terms of this Order. Verbal notification must be followed in writing within one day. In the event Respondent fails to provide such notice, Respondent shall be deemed not to have complied with the terms of this Order.

22. Respondent shall retain copies of all records and files relating to hazardous substances found on the Site for six years following completion of the activities required by this Order and shall make them available to the U.S. EPA prior to the termination of the removal activities under this Order.

23. The Respondent shall submit a final report summarizing the actions taken to comply with this Order. The report shall contain, at a minimum: identification of the Site, a description of the locations and types of hazardous substances contained in the Tank Car or in other cars on the same train before the Spill or encountered at the Site upon the initiation of work performed under this Order, a chronology and description of the Spill and the actions performed (including both the organization and implementation of response activities), a listing of the resources committed to perform the work under this Order (including financial, personnel, mechanical and technological



resources), identification of all items that affected the actions performed under the Order and discussion of how all problems were resolved, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, and a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant paperwork developed or received during the action (e.g., manifests, invoices, bills, contracts, permits). The final report shall also include an affidavit from a person who supervised or directed the preparation of that report. The affidavit shall certify under penalty of law that based on personal knowledge and appropriate inquiries of all other persons involved in preparation of the report, the information submitted is true, accurate and complete to the best of the affiant's knowledge and belief. The report shall be submitted within ten days of completion of the work required by the U.S. EPA.

24. All notices, reports and requests for extensions submitted under terms of this Order shall be sent by certified mail, return receipt requested, and addressed to the following:

one copy      Robert Bornstein, H-8-3  
On Scene Coordinator  
U.S. EPA  
75 Hawthorne Street  
San Francisco, CA 94105

one copy      Roger Klein, RC-3-2  
Assistant Regional Counsel  
U.S. EPA  
75 Hawthorne Street  
San Francisco, CA 94105

25. If any provision of this Order is deemed invalid or unenforceable, the balance of this Order shall remain in full force and effect.

26. Nothing herein shall prevent Respondent from complying with applicable orders or directions of other government agencies.

#### ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the selection of the response action for this site will be available for review on normal business days between the hours of 9:00 a.m. and 5:00 p.m. in the Office of Regional Counsel, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, 16th Floor, San Francisco, California. Please contact Roger Klein, Assistant Regional Counsel, at (415) 744-1312, to review the Administrative Record.

### OPPORTUNITY TO CONFER

With respect to the actions required above, Respondent may, within one day after issuance of this Order, request a conference with the U.S. EPA. Any such conference shall be held within two days from the date of request unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person, or be represented by an attorney or other representative. If Respondent desires such a conference, the Respondent shall contact Roger Klein, Assistant Regional Counsel, at (415) 744-1312.

If such a conference is held, Respondent may present any evidence, arguments or comment regarding this Order, its applicability, any factual determinations upon which the Order is based, the appropriateness of any action which Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to U.S. EPA within one day following the conference. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three days following issuance of this Order. Any such writing should be directed to Roger Klein, Assistant Regional Counsel, at the address cited above.

Respondent is hereby placed on notice that U.S. EPA will take any action which may be necessary in the opinion of U.S. EPA for the protection of public health and welfare and the environment and that other Federal and State agencies may take other appropriate actions, and Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), Section 311 of the Clean Water Act, and/or any other applicable law for the costs of those government actions.

### PENALTIES FOR NONCOMPLIANCE

Respondent is advised, pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful violation or failure or refusal to comply with this Order, or any portion thereof, may subject the Respondent to a civil penalty of up to \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject the Respondent to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondent to take proper action,

pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

THIS ORDER IS ISSUED on this 16th day of July, 1991.  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: 

Jeff Zelikson, Director  
Hazardous Waste Management Division  
United States Environmental  
Protection Agency, Region IX